

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED

JUN 18 2007

Federal Communications Commission
Office of the Secretary

In the Matter of

Amendment of Section 73.202(b)

Table of Allotments,

FM Broadcast Stations.

(Coal Run, Kentucky and Clinchco, Virginia

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)
)

MB Docket No. 04-319

RM-10984

To: Office of the Secretary

Attn: Assistant Chief, Audio Division, Media Bureau

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

East Kentucky Broadcasting Corporation ("East Kentucky"), by its attorneys, pursuant to Section 1.106(h) of the Commission's rules, hereby respectfully replies to an Opposition filed by Dickinson County Broadcasting Corp. ("Dickinson") on May 17, 2007 to East Kentucky's May 4, 2007 Petition for Reconsideration of the Commission staff's *Report and Order* in this matter, DA 07-1350, released March 2, 2007 ("Report and Order").¹

In reply to Dickinson's Opposition, the following is respectfully shown:

1. Dickinson begins by claiming that East Kentucky's petition is procedurally defective for having cited the general reconsideration provision of Section 1.106 of the Commission's rules in lieu of the special provision of Section 1.429 that applies to reconsideration of notice and comment rulemaking petitions. Dickinson claims to have been prejudiced due to the different timetables provided by those respective rules. Sections 1.106 and 1.429 both provide a period of 30 days after Federal Register publication to file a petition for

¹ East Kentucky's Petition of Reconsideration appeared in the Commission's Public Notice, Report No. 2815, released May 24, 2007, which set a deadline for replies 10 days after the time for filing opposition had expired; oppositions were due 15 days after the date of public notice of the Petition in the Federal Register.

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reconsideration. While Dickinson claims prejudice for having been “relegated to a mere 10 days to prepare an opposition” it could easily have requested an extension of time, to which East Kentucky would have consented, but never did. Moreover, the Commission’s Public Notice, Report No. 2815, released May 24, 2007, afforded Dickinson an additional 15 days to file (or supplement) its Opposition, but Dickinson never bothered to do so. In any event, it is clear that Dickinson had no trouble filing its complete Opposition, and chose to do so well in advance of the deadline imposed by the May 24 Public Notice. Dickinson clearly suffered no prejudice.

2. Turning to the putative merits of its Opposition, Dickinson presents a single argument. In its Petition for Reconsideration, East Kentucky had demonstrated that Commission staff had misconstrued the plain meaning of Section 73.211 of its rules, which permits specification of effective radiated power below 6 kW, provided that the proposed reference distance exceeds the distance to the class contour for the next lower class.² At Page 4 of its Opposition, Dickinson concedes that East Kentucky might be correct, but goes on to claim that East Kentucky’s proposal is technically infeasible. In support, all Dickinson attempts to show is that a single radial fails to achieve line of sight coverage to a single point within the Coal Run boundaries due to terrain blockage. However, as demonstrated in the attached technical report of Charles M. Anderson Associates, Dickinson’s showing, even if true, is irrelevant. As Mr. Anderson notes, line of sight is not necessarily required:

Where it is alleged that a site cannot be found that allows line-of-sight coverage over the community or a transmission path free of a major obstruction, as required by Section 73.315 of the Commission’s rules, the proponent must demonstrate by an engineering showing that the received signal strength as transmitted from the site will exceed 70 dBu and will encompass the entire community.

² At page 4 of its Opposition, Dickinson suggests that the Commission should apply more a stringent standard (requiring power of a minimum of 6 kw) to purely hypothetical allocation sites than to actual authorizations, but provides no authority – nor logical support – for such an approach.


Vacaville and Middletown, CA, 4 FCC Rcd 8315 (1989) at ¶13. East Kentucky has done that.

3. As evidenced by his attached technical report, Mr. Anderson has followed prescribed Commission procedure. Specifically, using the FCC's standard method and the Longley-Rice method, he demonstrates that a signal level significantly greater than 70 dBu would be delivered to the entire Coal Run community. He further notes that this will be possible with a 207 meter tower – a height which does not trigger the concerns raised by Dickinson with respect to its assumption of a tower having a required height in excess of 400 meters.³

4. In view of the foregoing, we respectfully submit that Dickinson has failed to provide any viable basis upon which East Kentucky's petition for reconsideration should be dismissed. Consequently, and for the reasons set forth therein, East Kentucky respectfully submits that the relief requested in its petition for reconsideration be granted.

Respectfully submitted,

**EAST KENTUCKY
BROADCASTING CORPORATION**

By: 
John Garziglia
Peter Gutmann
Its Attorneys

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June 18, 2007

³ As Mr. Anderson notes in his technical report, the Commission found no problem with the proposal of a tower 205 meters above ground level in order to clear terrain blockage and provide predicted 70 dBu contour over an entire city of license in *Lake City, Chattanooga, Harrogate and Halls Crossroads, TN*, 20 FCC Rcd 18961 (Media Bureau 2005) at ¶¶8 and 10.

**TECHNICAL REPORT
IN SUPPORT OF EAST KENTUCKY BROADCASTING CORPORATION
REPLY TO DICKENSON COUNTY BROADCASTING CORPORATION
OPPOSITION TO THE PETITION FOR RECONSIDERATION IN**

MB Docket No. 04-319

This technical report is provided in support of a reply to an opposition filed by Dickenson County Broadcasting Corp. (Dickenson) to the Petition for Reconsideration filed by East Kentucky Broadcasting Corporation (East Kentucky) to the Commission's action in DA-1350 denying the proposed incompatible swap upgrade for station WPKE-FM.

In its opposition Dickenson submits a single radial (312 degree True) to Coal Run from the original proposed 221C3 allocation reference point asserting a lack of line of sight to Coal Run. Dickenson did not submit any evidence or calculations as the Commission has required in previous cases (e.g. *The Dalles, OR et al., FCC 04-118 at paragraph 17*) to establish that the alleged blockage to a single point in the Coal Run boundaries would prevent the delivery of a 70 dBu (50/50) signal over the entire community.

East Kentucky's proposal will provide a 70 dBu signal over all of Coal Run based on the Commission's standard method and the use of Longley-Rice:

The Commission has held in several cases that line of sight is not required over an entire community. In fact, in the *Madison, IN, Report and Order (MM Docket No. 98-105)* the Commission stated:

Our studies further indicate that considering the terrain obstruction between the proposed site for channel 266A and the community of Madison, the 70 dBu signal will be attenuated once it reaches Madison, but in any event it will not fall below the required level of service over the city of Madison (paragraph 5).

Furthermore, in the *Vacaville and Middletown, CA First Report and Order (MM Docket No. 88-491)*, the Commission clearly enunciated the fact that line of sight is not required:

Where it is alleged that a site cannot be found that allows line-of-sight coverage over the community or a transmission path free of a major obstruction, as required by Section 73.315 of the Commission's Rules, the proponent must demonstrate by an engineering showing that the received signal strength as transmitted from the site will exceed 70 dBu and will encompass the entire community (paragraph 13).

The FCC's standard method and the Longley-Rice method predict that a signal level significantly greater than 70 dBu will be delivered to the entire Coal Run community. Exhibits E1 and E2 demonstrate that the Longley-Rice "mean occurrence" 70 dBu extends well beyond the Coal Run boundaries. This calculation was performed

Charles M. Anderson Associates

using the V-Soft Probe 3 software which is based on the U.S. Department of Commerce-NTIA algorithm. Longley-Rice calculations using this software have been accepted by the Commission on many occasions. The Longley-Rice parameters used are standard for the geography involved, and are enumerated on the exhibit.

The original proposed 221C3 allocation site at N 37-23-57 W 82-23-42 with a site elevation of 555 meters and a 207 meter tower in accordance with the Commission's action in a Class A allocation at *Halls Crossroads, TN (MB Docket No. 03-120 Report and Order)* where a 207 meter tower was considered acceptable to establish community coverage. An ERP of 1.75 kW was utilized based on the eight radial HAAT of 375 meters.

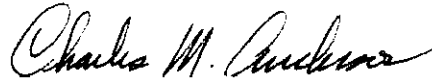
It is also noted in denying the original proposal, the Commission acknowledged that the use of a 173 meter tower at the original proposed allocation point could achieve line of sight to Coal Run, KY in compliance with Section 73.315 (see paragraph 4).

East Kentucky has already established that Class C3 allocations requiring the use of an ERP below 6 kW are permitted

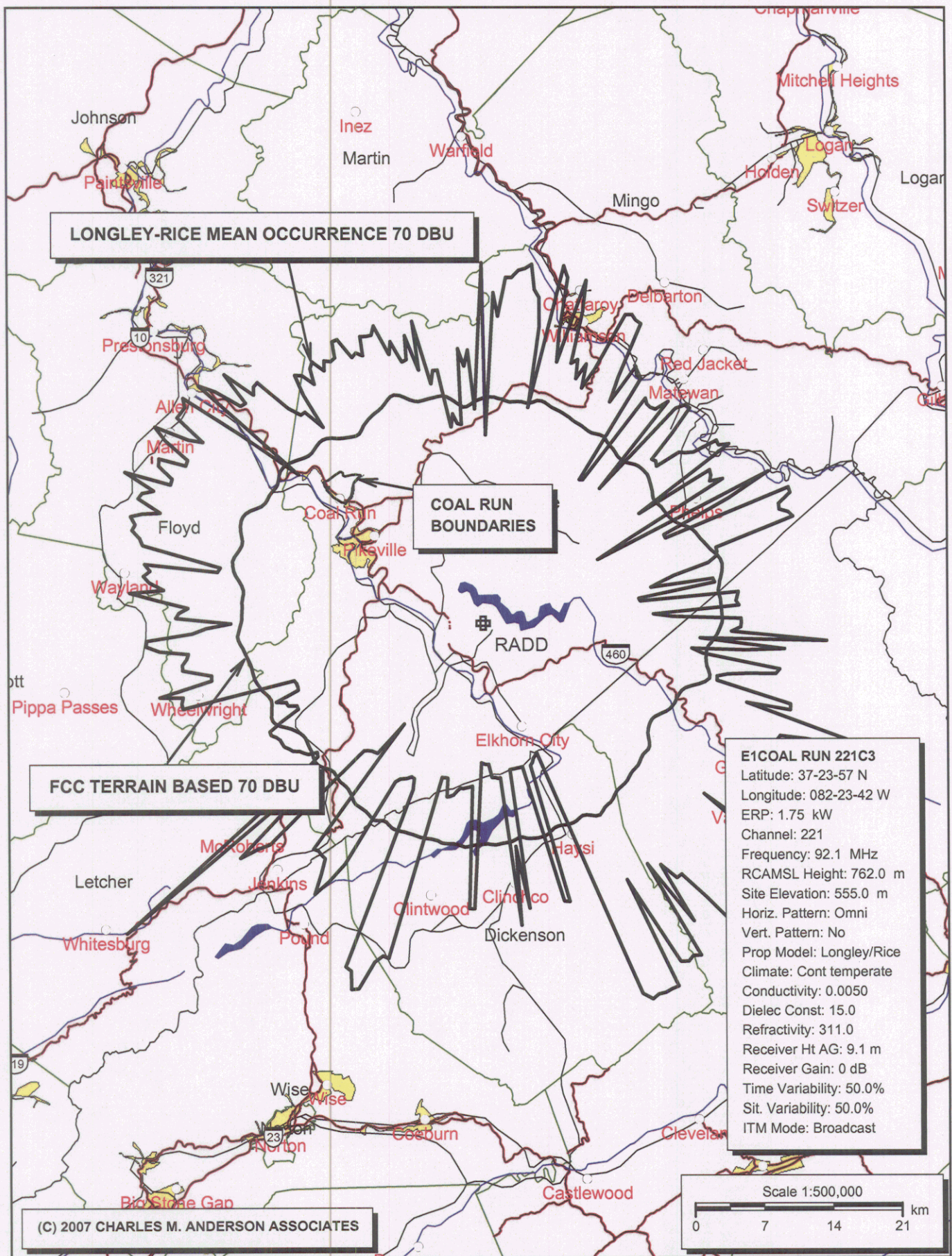
East Kentucky provided a listing of one hundred twenty five Class C3 stations operating with ERPs below 6 kW, and at least one existing and another proposed C3 allocations at sites requiring the use of an ERP less than 6 kW (see Petition for Reconsideration).

Conclusion

It is concluded that the proposed Coal Run 221C3 allocation meets the Commission allocation requirements including that of Section 73.315(a); that the Commission's interpretation of Section 73.211 enunciated in Para. 4 of the Report and Order is in error; and, that, in fact, a class C3 allotment may be made at a reference point requiring the use of an ERP less than 6 kW based on the combination of ERP and HAAT required to produce a 39 km reference contour.



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E2 COAL RUN MEAN OCCURRENCE LONGLEY-RICE 70 DBU

Latitude: 37-23-57 N
 Longitude: 082-23-42 W
 ERP: 1.75 kW
 Channel: 221
 Frequency: 92.1 MHz
 AMSL Height: 762.0 m
 Elevation: 555.0 m
 Horiz. Antenna Pattern: Omni
 Vert. Elevation Pattern: No

Type of contour: Signal Calculated

of Radials Calculated: 360

Using the mean occurrence method at 70.0 dBu

Bearing (deg)	Distance (km)	HAAT (m)
-----	-----	-----
0.0	36.6	367.8
1.0	19.1	372.6
2.0	33.6	374.0
3.0	31.2	373.5
4.0	35.2	370.1
5.0	35.3	369.0
6.0	36.0	363.8
7.0	36.3	360.9
8.0	36.8	364.0
9.0	34.3	366.6
10.0	33.6	368.7
11.0	30.6	366.7
12.0	22.4	367.8
13.0	37.3	375.5
14.0	36.2	384.1
15.0	30.2	386.4
16.0	27.5	384.1
17.0	36.4	378.9
18.0	33.2	374.2
19.0	27.9	371.9
20.0	28.5	370.3
21.0	26.5	368.1
22.0	28.4	365.6
23.0	25.9	362.2
24.0	28.3	358.6
25.0	34.5	356.0
26.0	34.8	355.1
27.0	34.5	353.6
28.0	34.4	350.8
29.0	28.5	348.4
30.0	25.9	349.2

6/15/2007 10:34:16 AM

31.0	30.4	353.0
32.0	29.6	358.1
33.0	29.6	359.5
34.0	17.5	355.2
35.0	17.8	349.0
36.0	28.2	345.7
37.0	27.8	342.9
38.0	27.8	338.3
39.0	27.9	333.7
40.0	29.4	331.6
41.0	18.1	332.7
42.0	29.3	336.7
43.0	30.3	343.6
44.0	30.3	351.2
45.0	27.3	356.0
46.0	23.9	357.4
47.0	24.0	357.9
48.0	23.8	357.4
49.0	26.4	353.5
50.0	26.9	347.1
51.0	27.5	340.8
52.0	30.1	334.7
53.0	30.0	327.5
54.0	30.9	321.6
55.0	19.4	320.8
56.0	27.8	324.1
57.0	27.6	327.7
58.0	27.1	328.6
59.0	28.4	329.0
60.0	16.9	330.7
61.0	13.3	335.0
62.0	32.8	340.3
63.0	28.0	348.8
64.0	20.5	361.3
65.0	20.5	375.1
66.0	33.9	385.1
67.0	33.8	391.3
68.0	32.3	395.3
69.0	32.2	400.2
70.0	33.0	407.0
71.0	33.3	413.6
72.0	24.9	420.2
73.0	24.8	429.8
74.0	24.6	439.3
75.0	23.6	445.9
76.0	20.0	447.0
77.0	18.5	443.4
78.0	17.4	438.6
79.0	23.8	431.8
80.0	23.9	424.2

6/15/2007 10:34:16 AM

81.0	16.0	418.9
82.0	16.1	413.7
83.0	26.0	415.0
84.0	25.9	417.4
85.0	25.8	417.5
86.0	26.0	417.8
87.0	17.3	418.6
88.0	19.3	419.2
89.0	26.1	420.0
90.0	26.1	418.2
91.0	26.1	412.3
92.0	25.2	406.3
93.0	34.8	400.2
94.0	22.0	391.1
95.0	30.6	382.3
96.0	26.7	372.3
97.0	21.3	367.4
98.0	22.5	368.2
99.0	30.4	369.5
100.0	30.1	371.9
101.0	27.2	377.4
102.0	25.3	386.7
103.0	24.3	394.3
104.0	24.4	396.2
105.0	32.2	385.0
106.0	32.3	364.6
107.0	27.9	342.6
108.0	38.7	325.5
109.0	38.9	316.6
110.0	34.7	312.9
111.0	32.2	311.2
112.0	32.0	310.2
113.0	30.9	309.4
114.0	31.0	307.4
115.0	37.0	303.8
116.0	30.4	297.2
117.0	37.2	288.8
118.0	36.3	281.0
119.0	35.5	274.3
120.0	35.4	271.2
121.0	34.5	271.5
122.0	34.3	273.4
123.0	30.5	276.7
124.0	34.5	282.1
125.0	35.2	291.1
126.0	35.0	301.5
127.0	46.3	309.1
128.0	28.3	311.7
129.0	46.0	310.5
130.0	46.0	309.7

6/15/2007 10:34:16 AM

131.0	46.8	312.1
132.0	46.2	316.5
133.0	45.7	319.8
134.0	35.2	320.3
135.0	46.3	320.1
136.0	44.3	322.1
137.0	44.2	326.3
138.0	43.8	330.1
139.0	39.1	331.8
140.0	43.8	332.2
141.0	36.0	332.4
142.0	32.5	334.3
143.0	32.5	339.9
144.0	30.4	347.5
145.0	37.0	352.3
146.0	29.5	352.9
147.0	40.3	355.2
148.0	39.9	362.6
149.0	40.2	368.4
150.0	39.8	364.8
151.0	29.9	353.8
152.0	41.8	344.7
153.0	41.8	341.5
154.0	41.8	343.6
155.0	41.7	347.6
156.0	41.9	349.7
157.0	41.0	348.3
158.0	14.3	345.2
159.0	14.5	342.3
160.0	14.7	340.4
161.0	15.1	341.1
162.0	15.3	346.8
163.0	29.6	354.1
164.0	29.4	358.3
165.0	15.2	358.7
166.0	15.2	358.6
167.0	15.2	356.0
168.0	15.2	354.1
169.0	15.2	350.3
170.0	15.2	344.5
171.0	29.4	345.3
172.0	23.0	350.2
173.0	31.0	354.3
174.0	15.9	355.4
175.0	15.9	356.6
176.0	15.8	358.2
177.0	15.8	360.1
178.0	14.4	358.6
179.0	14.4	356.1
180.0	14.4	356.9

6/15/2007 10:34:16 AM

181.0	14.3	357.8
182.0	29.0	359.2
183.0	29.0	361.9
184.0	16.7	367.1
185.0	16.8	369.1
186.0	16.9	366.6
187.0	17.0	363.2
188.0	17.0	362.0
189.0	17.3	364.1
190.0	17.8	366.0
191.0	18.0	366.3
192.0	18.1	362.1
193.0	16.3	361.1
194.0	16.3	360.9
195.0	16.3	363.3
196.0	35.5	365.4
197.0	35.3	365.0
198.0	36.2	363.6
199.0	39.3	364.1
200.0	39.6	364.4
201.0	37.8	365.3
202.0	37.7	367.7
203.0	18.5	370.5
204.0	17.4	370.0
205.0	17.3	364.7
206.0	17.6	358.9
207.0	17.8	359.1
208.0	18.0	366.0
209.0	18.5	371.5
210.0	28.3	370.0
211.0	30.6	364.3
212.0	32.5	360.7
213.0	30.4	359.9
214.0	28.9	360.4
215.0	28.8	359.8
216.0	28.6	355.1
217.0	28.8	347.2
218.0	13.1	339.3
219.0	17.1	334.1
220.0	17.2	331.7
221.0	17.3	331.6
222.0	17.5	332.1
223.0	17.8	330.4
224.0	31.3	326.1
225.0	32.5	323.4
226.0	34.3	325.6
227.0	24.5	332.1
228.0	24.6	339.7
229.0	48.0	345.4
230.0	24.3	346.9

231.0	21.6	344.2
232.0	21.4	339.1
233.0	22.3	334.5
234.0	22.5	331.8
235.0	22.8	329.7
236.0	23.4	326.7
237.0	23.5	324.9
238.0	23.8	326.0
239.0	23.8	331.0
240.0	23.8	338.5
241.0	24.0	348.4
242.0	24.4	361.5
243.0	24.3	377.5
244.0	22.6	390.0
245.0	20.7	395.1
246.0	20.7	392.9
247.0	21.5	386.3
248.0	21.5	379.6
249.0	22.5	373.4
250.0	20.0	370.7
251.0	19.9	374.3
252.0	19.9	382.2
253.0	20.0	390.8
254.0	31.6	395.7
255.0	31.6	401.2
256.0	31.4	405.1
257.0	33.7	406.0
258.0	28.1	407.2
259.0	28.0	407.4
260.0	29.4	409.5
261.0	30.9	413.9
262.0	30.8	419.7
263.0	30.3	424.4
264.0	30.0	429.0
265.0	33.0	436.1
266.0	34.3	442.6
267.0	34.2	444.7
268.0	29.5	440.2
269.0	28.0	435.7
270.0	25.5	431.2
271.0	31.1	428.4
272.0	30.9	428.2
273.0	30.0	428.2
274.0	33.0	428.8
275.0	36.0	430.8
276.0	32.5	429.9
277.0	34.0	428.1
278.0	34.8	430.3
279.0	34.2	438.6
280.0	34.8	451.6

6/15/2007 10:34:16 AM

281.0	27.4	465.1
282.0	27.2	475.4
283.0	35.3	481.6
284.0	35.8	485.5
285.0	36.8	483.6
286.0	36.7	477.7
287.0	37.3	473.3
288.0	36.2	470.5
289.0	34.5	473.6
290.0	37.2	481.3
291.0	37.0	489.7
292.0	36.0	496.1
293.0	39.3	500.2
294.0	34.6	500.3
295.0	34.7	495.5
296.0	36.5	486.0
297.0	36.8	472.2
298.0	34.0	459.9
299.0	34.2	453.7
300.0	37.1	453.5
301.0	38.7	454.4
302.0	35.2	453.3
303.0	33.8	450.4
304.0	37.3	451.0
305.0	37.3	456.6
306.0	37.3	464.4
307.0	38.0	469.3
308.0	31.0	469.7
309.0	24.0	466.4
310.0	37.5	460.3
311.0	35.8	452.3
312.0	32.9	443.1
313.0	32.8	434.2
314.0	36.3	428.3
315.0	32.8	427.2
316.0	33.3	429.8
317.0	33.4	433.6
318.0	29.3	435.8
319.0	28.0	434.5
320.0	28.0	428.8
321.0	25.6	417.8
322.0	29.4	404.3
323.0	31.5	393.0
324.0	31.0	385.0
325.0	29.6	378.0
326.0	31.1	371.7
327.0	31.6	371.2
328.0	30.2	378.2
329.0	31.0	387.2
330.0	30.6	394.0

6/15/2007 10:34:16 AM


331.0	30.8	399.5
332.0	32.3	404.5
333.0	32.3	407.8
334.0	30.0	410.3
335.0	30.3	415.3
336.0	29.7	423.1
337.0	31.6	432.5
338.0	31.4	439.7
339.0	31.3	440.7
340.0	32.1	433.3
341.0	28.9	419.8
342.0	30.0	405.0
343.0	27.7	394.8
344.0	27.8	389.2
345.0	30.2	388.4
346.0	26.5	388.3
347.0	31.5	388.7
348.0	24.9	389.1
349.0	26.1	390.5
350.0	26.0	390.5
351.0	20.1	384.0
352.0	21.5	374.4
353.0	20.4	361.9
354.0	20.3	350.7
355.0	28.0	341.2
356.0	26.1	341.3
357.0	27.8	348.1
358.0	21.8	357.7
359.0	27.6	363.1

Average HAAT for 8 radials : 375 m 30 sec V-Soft terrain.

CERTIFICATE OF SERVICE

I, Peter Gutmann, an attorney at the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that on this 18th day of June, 2007, I caused a copy of the foregoing "Reply to Opposition to Petition for Reconsideration" to be sent via first-class US Mail, postage prepaid, to the following:

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Washington, DC 20016
(Counsel for Dickinson County Broadcasting Corp.)


Peter Gutmann